

1977 June 1

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

SOFOCLIS G. ELIASIDES,

Appellant.

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3792).

Criminal Law—Conviction for careless driving—Based on inferences drawn from nature of damage suffered by one of the cars—No expert evidence to explain significance of such damage—Conviction cannot be upheld as a decision reached with the certainty required in a criminal case—Set aside.

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Road traffic—Careless driving—Collision between vehicles moving in opposite directions—Two conflicting versions—But conviction based on inferences drawn from nature of damage suffered by one of the cars—No expert evidence to explain significance of damage—Conviction set aside.

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Faced with the two conflicting versions of the two drivers involved in a traffic collision, the trial Judge did not decide how the accident occurred by accepting evidence which, in view of the demeanour of the witnesses concerned, appeared to be credible, but he chose to accept the version of the other driver, and reject that of the appellant, because of certain inferences which he drew from the nature of the damage suffered by the front bumper of the other car. No expert evidence was, however, adduced at the trial in order to explain the significance of that damage and counsel for the respondents submitted that such damage could be treated as being equally consistent with both the versions of the other driver and the appellant.

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Upon appeal against conviction of the offence of driving without due care and attention:

Held, that in the circumstances it cannot be found that the

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conviction of the appellant can be upheld as a decision that was reached with the certainty required in a criminal case, and that, accordingly, the Court has to set it aside and allow the appeal.

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Appeal allowed.

Appeal against conviction.

Appeal against conviction by Sophoclis G. Eliasides who was convicted on the 2nd March, 1977 at the District Court of Nicosia (Criminal Case No. 31534/76) on one count of the
10 offence of driving without due care and attention contrary to sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72) and was bound over by A. Ioannides, D.J., to observe the traffic Laws and Regulations for six months.

M. Zambakidou (Miss), for the appellant.

15 *N. Charalambous*, Counsel of the Republic, for the respondents.

TRIANTAFYLIDIS P.: In the present case the appellant appeals against his conviction of the offence of driving a motor vehicle on a road without due care and attention, contrary to
20 sections 8 and 19 of the Motor Vehicles and Road Traffic Law, 1972 (Law 86/72).

The charge arose out of a collision which occurred on September 26, 1976, on the Pedhoulas-Kykkos road, and in which there were involved a vehicle driven by the appellant and another
25 vehicle coming from the opposite direction. The collision took place on the wrong side of the road in so far as the appellant was concerned. The trial Judge was faced with the conflicting versions of the two drivers, who were both co-accused in one and the same case; their versions, to the effect that each one
30 of them was keeping to his proper side of the road until just before the collision, were supported, respectively, by evidence adduced at the trial by the prosecution.

It does not appear from the evidence on record how it came to be that the appellant left his proper side and veered to his
35 right. His own explanation, which is supported by the evidence of a prosecution witness, who happens to be his father, was that he was forced to do so in order to avoid colliding with the vehicle driven by the other driver, who had negotiated a bend

keeping to his wrong side of the road. This version has been denied by the other driver.

The trial Judge did not decide how the accident did occur by accepting evidence which, in view of the demeanour of the witnesses concerned, appeared to be credible, but he chose to accept the version of the other driver, and reject that of the appellant, because of certain inferences which he drew from the nature of the damage suffered by the front bumper of the other car. There has not, however, been adduced at the trial any expert evidence in order to explain the significance of that damage and, as it has very fairly been submitted by counsel for the respondents, such damage could be treated as being equally consistent with both the versions of the other driver and of the appellant.

In the circumstances we cannot find that the conviction of the appellant can be upheld as a decision that was reached with the certainty required in a criminal case, and we have, therefore, to set it aside and allow the appeal.

Appeal allowed.